IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1769 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ARVINDBHAI KHIMCHANDBHAI SONI & 1 - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR SAMIR J DAVE for Applicant(s) : 1 - 2.
Mr. KT Dave, Addl. PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/09/2007
ORAL JUDGMENT

Rule. Shri KT Dave, learned APP waives service of Rule on behalf of respondent State. With consent of learned advocates appearing for

the parties the matter is taken up for final hearing today.

2. By way of this petition under Article 226/227 of the Constitution of India the petitioners original-accused have prayed for an appropriate order to close the proceedings of Criminal Case No. 3641 of 2005 arising from FIR being C.R. No.I-131 of 2005 registered with Wadi police station, Vadodara.

3. Shri Samir J. Dave, learned advocate appearing for the petitioners original-accused has submitted that petitioners preferred Criminal Misc. Application No. 12842 if 2006 before this Court to quash and set aside the FIR being C.R. No.I-131/2005 registered before the Wadi police station, Vadodara and learned Single Judge of this Court [Coram: Mr. J.R. Vora, J.] by judgment and order dated 24.7.2006 allowed the said application and quashed and set aside the FIR being C.R. No. I-131 of 2005 registered before

Wadi police station, District-Vadodara at the instance of original-respondent No.2 along with all proceedings taken in pursuance of the said FIR, and still the learned JMFC, 1st Court, Vadodara issued summons upon the petitioners in the proceedings being Criminal Case No. 3641 of 2005. Shri Dave, learned advocate appearing on behalf of the petitioners has submitted that in fact after receipt of summons by the learned Trial Court the petitioners original-accused submitted an application before the learned Magistrate pointing out that there is no question of proceeding further with the said criminal case as the FIR itself has been quashed and set aside by this Court along with all other further proceedings arising out of the said FIR and in support thereof even a certified copy of the order passed by this Court quashing and setting aside other proceedings was produced before the learned Magistrate, still the learned Magistrate issued the notice upon the original-complainant. It is submitted that once the proceedings are

quashed and set aside by this Court the learned Magistrate has no further jurisdiction to pass any order and/or to proceed further with the complaint/criminal case. Therefore it is requested to allow the present petition and pass appropriate order.

4. Taking a very serious note of what has happened in the present proceedings, more particularly when it was pointed out to the learned JMFC, Court No.1, Vadodara that the FIR itself is quashed and set aside by this Court along with all other proceedings arising out of the said FIR there was no occasion for the learned Magistrate to proceed further with the said complaint and/or even to issue summons upon the petitioners original-accused and/or to issue notice upon the original-complainant, this Court passed the following order on 18th September 2007;

> *"A grievance which is voiced in the present petition is that in spite of the judgment and order*

passed by this Court dated 24-7-06 in Criminal Misc. Application No.12842 of 2005 quashing and setting aside the FIR being C.R. No. I 131/05 registered before the Vadi Police Station, Dist: Vadodara along with all the proceedings taken in pursuant to the said FIR and in spite of the fact that the certified copy of the said judgment and order was placed before the ld. JMFC, more particularly, ld. JMFC, First Court, Vadodara, still the ld. JMFC, First Court has issued the summons upon the petitioners to answer the charge for the offence u/s 498-A, 506(2), 177 AND 504 of IPC in connection with the aforesaid FIR. Once the complaint/FIR along with all proceedings taken in pursuant to the said FIR has been quashed by this Court, the ld. Magistrate, Vadodara has no jurisdiction to continue with the proceedings arising out of the FIR which is already quashed by this Court. Under the circumstances, S.O. to ***25th September 2007****. To be placed in 1st Board. The ld. Principal District and Sessions Judge, Vadodara is directed to send the explanation from the ld. JMFC, first Court, Vadodara how and under which provision of law, he has issued the summons upon the petitioners and even has directed the original complainant to remain present for recording her statement, though the complaint/FIR itself has been quashed and set aside by this Court. The ld. Principal District and Sessions Judge, Vadodara is directed to see that the said report from the concerned Magistrate is received by this Court on or before 24-9-07. Office is directed to send this order to the the ld. Principal*

District and Sessions Judge,

Vadodara by special massenger so as to reach him on or before 20-9-2007.

It is reported that the next date of hearing before the ld. JMFC is on 20-9-07. Under the circumstances, further proceedings before the ld. JMFC, First Court, Vadodara are hereby stayed. DS permitted."

5. That a Report dated 19th September 2007 is received from the learned JMFC, Court No.1, Vadodara and in the said report the learned Magistrate has reported that before quashing the proceedings initiated under CR No.I.131/2005, by order dated 24/07/2006 passed by the Hon'ble High Court (Coram: J.R. Vora, J.) in Cri.Appln. No. 12842/2005, the Investigating Officer, after completion of investigation had already submitted the Charge-Sheet on 19/12/2005, which came to be registered on 19/12/2005 as Criminal Case No. 3641/2005, and order to issue summons to the accused was already passed by his predecessor-in-office on 19/12/2005 and accordingly summons was issued to the accused and they have appeared

through their Ld. Advocate Shri A.B. Joshi and for the first time on 30/07/2007 the accused persons submitted xerox copy of the order dated 24/07/2006 and requested the court by application (Exh.4) to drop the proceedings and only with an intention to ascertain about genuineness of the request, and keeping in mind the past incidents of production of bogus order/warrant etc, he thought if fit to issue notice to the Investigating Officer. So far as the notice to the complainant is concerned it may be stated that the accused persons, as the matter was settled between the parties themselves by application dated 10/09/2007 (Exh.9) requested the Court to issue notice to the complainant Vaishaliben at her new address and to hand over the 'cover' to them for direct service.”

6. This Court perused the report submitted by the learned JMFC, 1st Court, Vadodara. Shri Samir J. Dave, learned advocate appearing for the petitioners has submitted that in fact the

learned JMFC insisted for issuance of notice upon the original-complainant and therefore the petitioners were constrained to furnish fresh addresses, otherwise they had already submitted application vide Exh. 4 to drop the proceedings as per the judgment and order dated 24th July 2006 passed by this Court in Criminal Misc. Application No. 12842 of 2005 whereby this Court has quashed and set aside the FIR as well as further proceedings. It is also required to be noted that as such certified copy of the judgment order passed by this Court in Criminal Misc. Application No. 12842 of 2005 was already produced before the learned Magistrate. Under the circumstances, when the FIR itself was quashed and set aside by this Court along with all further proceedings arising out of the said FIR, the learned Judicial Magistrate (FC) had no jurisdiction and/or the learned Judicial Magistrate (FC) was not required to pass further order of issuing summons and/or notices either upon the accused persons or the original-

complainant. It is also borne out from the record that even the writ of the order passed by this Court on Criminal Misc. Application No. 12842 of 2005 has been sent by the Registry to the learned Sessions Judge, Vadodara on 5.8.2006 vide outward No. 4022. When that is the case, the learned Magistrate was not justified in issuing summons upon the petitioners and even notice upon the original-complainant. Such action is absolutely arbitrary, unwarranted and illegal as once the proceedings are quashed and set aside by this Court the criminal case would not survive. Further, considering the Report submitted by the learned JMFC, 1st Court, Vadodara, the Registry is directed to send this order to the learned Principal District & Sessions Judge, Vadodara, to look into the matter and take appropriate action. The learned Judicial Magistrate (FC), 1st Court, Vadodara is hereby warned that any such repetition would be viewed very seriously.

7. For the reasons stated above, when the FIR itself has been quashed and set aside along with all other proceedings arising out of the said FIR, no other proceedings are maintainable in connection with the FIR already quashed and/or required to be continued before the Court of learned Magistrate. Under the circumstances, all the proceedings against the petitioners arising out of the said FIR Criminal Case No.I-131/2005 will not survive. The learned Magistrate is directed to close all the proceedings. Rule is made absolute accordingly. Direct service is permitted.

[M.R. Shah, J.]

rmr.